

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

**CLINTON AREA REGIONAL
TRANSIT MANAGEMENT, INC.**

Employer

and

Case 3-RC-11451

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO, LOCAL 294**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated that Clinton Area Regional Transit Management, Inc. (herein called "CART") is a corporation and wholly owned subsidiary of First Group America, with an office and place of business in Plattsburgh, New York. Annually, CART purchases and

receives at its Plattsburgh, New York facility goods and materials valued in excess of \$50,000 directly from points located outside the State of New York.

3. The parties stipulated that First Transit, Inc. (herein called “First Transit”) is a corporation owned by First Group America with an office and place of business in Plattsburgh, New York and multiple other facilities throughout the United States. Annually, First Transit, in conducting its business operations, purchases and receives at its Plattsburgh, New York facility goods and materials valued in excess of \$50,000 directly from points located outside the State of New York.

Based on the parties' stipulation and the record as a whole, I find that CART and First Transit are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.¹

4. The parties stipulated, and I find, that International Brotherhood of Teamsters, AFL-CIO, Local 294 (herein called “the Petitioner”) is a labor organization within the meaning of the Act. The Petitioner claims to represent certain employees of CART.

5. A question affecting commerce exists concerning the representation of certain employees of CART within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The petition, filed on June 21, 2004, seeks a bargaining unit of all full-time and regular part-time drivers employed by CART at its Plattsburgh, New York facility, excluding all other employees and supervisors as defined in the Act. CART maintains that CART and First Transit are a single employer or, alternatively, joint employers and that the appropriate unit includes all

¹ Although neither employer has denied jurisdiction, I nonetheless conclude that the Board has jurisdiction with respect to both First Transit and CART. In so concluding, I rely on the Board's decision in [Management Training Corporation](#), 317 NLRB 1355 (1995), finding that the Board will assert jurisdiction in cases where the petitioned-for employer manages employees pursuant to a contract with an exempt entity where the employer otherwise meets the Board's jurisdictional standards.

drivers, school bus drivers and bus monitors employed by CART and First Transit, excluding all other employees.²

Based on the evidence adduced during the hearing and the relevant case law, I find that CART and First Transit constitute a single employer. I further find that the employees in the petitioned-for unit share such a strong community of interest with the school bus drivers and bus monitors employed by First Transit as to render inappropriate a unit consisting solely of public transit drivers employed by CART. Accordingly, I find that the appropriate unit includes school bus drivers, public transit drivers, and monitors employed by CART and First Transit, excluding all other employees.

FACTS

Background:

First Transit operates approximately 120 companies nationwide. In July 2003, First Transit bought Progressive Transportation Coach, U.S.A. in Plattsburgh, New York. Teri Blake, First Transit's general manager, has been employed by First Transit since it acquired Progressive in 2003. Prior to that, Blake was the general manager for Progressive since 1994. The Plattsburgh office of First Transit is located at 17 Big Hank Plaza in Plattsburgh, New York.

CART is a New York corporation also located at 17 Big Hank Plaza in Plattsburgh, New York.³ CART has a separate telephone number but the same fax number as First Transit. CART is a party to a single five-year management contract with Clinton County due to expire in 2006.⁴

² The parties agree that all cleaners, mechanics, confidential employees, guards, professional employees, dispatchers, and supervisors as defined by the Act should be excluded from the unit.

³ I take judicial notice of the fact that CART was incorporated in New York as a domestic business corporation on June 27, 2003. See [Casa Italiana Language School](#), 326 NLRB 40 (1998)(judicial notice taken in representation proceeding of fact that employer was listed in the yellow pages).

⁴ The record is silent as to whether CART's predecessor had previous contracts with Clinton County.

Pursuant to this contract, CART provides drivers to operate public transit buses throughout Clinton County.

Both First Transit and CART are owned by First Group America. Approximately 25 employees work under the CART contract and there are 18 drivers and monitors dedicated as First Transit employees. Blake is responsible for both the operations of First Transit and CART. She supervises all of the employees for both entities. She prepares the budgets for both entities and she is responsible for the hiring, firing and training of employees employed by both entities. The only other management personnel identified by Blake is a dispatcher and a director of maintenance. The dispatcher and the director of maintenance are employed by First Transit and perform work for both First Transit and CART. Other employees employed at the Plattsburgh facility include cleaners, a C-mechanic,⁵ and a part-time dispatcher. Mechanics prepare a work order for the work that they do, and Blake bills the appropriate contract for the work.

First Transit has contracts with the Clinton County Health Department, Northern Adirondak Central School District, Champlain Valley Educational Services, and Plattsburgh City School District. The contracts run for durations ranging from one year to five years.⁶ Drivers who drive school buses for First Transit are referred to as school bus drivers. First Transit owns the school buses, which are traditional large and small yellow buses equipped with flashing lights and signs. All of First Transit's school bus contracts involve the transportation of preschool or special needs children who may have severe physical and/or behavioral problems.

First Transit puts out competitive bids for its school bus services and formulates its budget according to the bid if awarded the contract. First Transit must maintain twelve drivers and seven monitors for its school bus contracts. Bus monitors work with the drivers to care for

⁵ It is unclear from the record exactly what work is performed by the C-mechanic classification. It appears from the record that a C-mechanic is a mechanic who repairs vehicles and equipment.

⁶ State education law requires that school district put out a bid for transportation services annually.

the children while the driver operates the bus. The bus monitor duties are to ensure that the children are buckled in their booster seats, to get the children on and off the bus, clean up as needed, and to ensure that the children are safe. School bus drivers and bus monitors are trained to deal with the children's behavior problems. If the monitor is unable to handle the situation, the driver must stop the bus and pull off to the side of the road to assist the monitor. Both drivers and monitors are responsible for ensuring that children get on and off the bus safely. The drivers and monitors share bus cleaning duties. School bus drivers and bus monitors often work split shifts, although the four drivers dedicated to the Champlain Valley Educational Services buses work a straight shift from 7:40 a.m. through 3:00 p.m.

CART's sole contract is with Clinton County for the operation of public transit buses throughout the County. Drivers who drive the public transit buses are referred to as CART drivers. The contract with Clinton County is a management contract, meaning that all expenses associated with the public transit services are paid for by the County. Blake prepares a budget for public transit, which must be approved by Clinton County. Once approved, Blake must adhere to the budget in administering the contract. CART maintains a vendor and a payroll bank account set up by First Transit to cover expenses associated with the contract, and is subsequently reimbursed by Clinton County for all expenses associated with the contract.⁷ The public transit buses are mid-size buses that are white with a blue stripe and are owned by Clinton County. There are no bus monitors on the public transit buses. The buses operate in a similar fashion to conventional public transit systems. They make scheduled stops to pick up and drop off passengers who must pay a fare to ride the bus.

First Transit also operates private charter services, which are priced on an ad hoc basis. The coaches used for charters are owned by First Transit and are similar to Greyhound buses,

⁷ Vendor accounts are used to pay for items such as uniforms and parts for the vehicles.

with plush seating, a bathroom and video monitors. Charter services run throughout the year depending on the need for such services, and the availability of drivers and vehicles. Blake testified that May and June are the busiest month for charters, with approximately 50 percent of the work constituting charter work during those months. There are no monitors on the charter buses.

All drivers and monitors from First Transit and all CART drivers receive training from First Transit. Each month First Transit has safety meetings and training sessions attended by both First Transit employees and CART drivers. These meetings and training sessions are conducted by Blake or another person on staff. School bus drivers must receive training in operating a school bus, and in the rules and regulations regarding school buses. School bus drivers and monitors are trained to manage the children that they transport. CART drivers do not receive school bus and/or child management training unless they also drive school buses. School bus drivers are fingerprinted; CART drivers are not fingerprinted. School bus drivers must pass a physical performance test, while CART drivers are not required to do so. All drivers have a class B commercial driver's license. Monitors have no licensing requirement. There are two "19-A" examiners employed by First Transit who provide training and administer road tests for both school bus and public transit drivers.⁸ Blake testified that if a driver is hired without a license, he/she is trained for both public transit and school bus work, unless the employee is not interested in one or the other.

All drivers are hired by Blake. All advertisements for employees are placed in a local newspaper, the "Press Republican." The advertisements direct employees to apply at 17 Big Hank Plaza. There is no phone number listed on the advertisements and no employer is named, although requests to the newspaper for advertisements for school bus drivers are on First Transit

⁸ A 19-A examiner is certified by the state of New York to administer driving tests for commercial vehicles.

letterhead, while requests for public transit drivers are on letterhead that says, “CART, Division of First Transit, Inc.” Blake testified that she has, on occasion, just advertised for bus drivers.⁹ All drivers fill out the same job application form with First Transit’s name on the application. Blake stated that when she advertises for bus drivers, she tells applicants about both school bus and public transit opportunities. If hired, both CART drivers and First Transit employees receive a “hire letter” from Blake. For employees hired by First Transit, the letterhead says First Transit. For drivers hired by CART, the letterhead says, “CART, Division of First Transit Inc.” There are separate job descriptions for public transit drivers, school bus drivers, and monitors. All job descriptions list First Transit in the heading. Both CART and First Transit drivers are hired at \$8.00 an hour.

Public transit buses operate all year, while the school buses operate according to the school calendar. Separate schedules are maintained for school bus employees and CART drivers. All employees report to the First Transit office for work each day. Employees sign in at the start of their shifts. There are separate sign-in sheets for CART drivers and First Transit employees. If a CART employee is scheduled to work on a school bus, the employee would sign in on the First Transit sign-in sheet. First Transit drivers sign in on the CART sign-in sheet when driving public transit buses. The sign-in sheets are kept in the break room, which is used by both First Transit and CART employees.¹⁰ Vending machines in the break room are used by all employees. First Transit uses the money from the vending machines to buy soda or, if there is extra money, for holiday parties or employee luncheons. Holiday parties and employee luncheons are attended jointly by all CART and First Transit employees. Both CART and school bus drivers are dispatched by the same First Transit dispatchers.

⁹ There is no testimony as to which letterhead Blake uses when just advertising for bus drivers.

¹⁰ Blake testified that employees frequently come in early for their shifts and sit and talk with each other before their shifts begin.

Neither CART drivers nor First Transit employees receive benefits with the exception of unpaid vacation time.¹¹ CART drivers receive six paid holidays a year pursuant to CART's contract with the County. Both CART drivers and First Transit employees must fill out a request form to take time off. CART drivers are paid every Thursday. Their paychecks say "Clinton Area Regional Transit Management, Inc." First Transit employees are paid every other Friday of the week following the payday of CART drivers. Their paychecks say "First Transit, Inc." School bus drivers who fill in on CART runs receive a CART paycheck and CART drivers who fill in on school bus runs receive a First Transit paycheck for the hours that they work as school bus drivers.

Regarding the charter operations, Blake posts a schedule each month on the employee bulletin board of upcoming charters and solicits volunteers to sign up. Charters are First Transit work except where the county requests a charter bus for a certain occasion.¹² Blake testified that there is a substantial amount of charter work in May and June, and that charter work is performed by both CART and school bus drivers. Blake testified that if more than one driver signs up to do a charter, she picks the driver based on their availability. Blake identified ten drivers who drove charters in May 2004; of those ten, six were First Transit drivers, three were CART drivers, and one is a driver for both First Transit and CART.¹³ Six drivers drove charters in June 2004. Of the six, four were First Transit drivers, one was a CART driver, and one is a driver for both. In July, Blake had a request for four CART charters through the County

¹¹ CART employees earn unpaid vacation based on their length of service; school bus drivers can take unpaid leave when school is out of session.

¹² If the county requests a charter, the vehicle normally used is a county vehicle and the work is billed to the CART contract.

¹³ Another of the First Transit drivers is also the 19-A examiner for both First Transit and CART.

Planning Board. To fill the order, Blake used two CART drivers, one First Transit driver, and one driver who drives on both.¹⁴

Blake testified that she frequently uses CART drivers to do school bus work. Two of the CART drivers, Dave O'Brien and Joe Gittens, have been driving the Northern Adirondack Central School District route since October 2003 because First Transit does not have a driver to cover this route. They voluntarily drive the school bus routes in addition to their regularly scheduled CART duties for extra money. O'Brien and Gittens receive two paychecks when they drive the school bus routes – one from CART and one from First Transit the following week. One driver is dedicated as a floater to drive both school buses and public transit buses as needed. First Transit has one substitute driver who works either as a school bus driver or as a CART driver. While less frequent, school bus drivers also fill in on public transit routes. Blake stated that CART and public transit drivers are not forced to fill in for each other, and she takes the preferences of employees into account. Some school bus drivers elect to drive a CART route when school is not in session. Blake testified that in the past year, two employees have transferred from CART to school bus work.

The record demonstrates that First Transit employees drive public transit buses with some frequency. Sixty employees have driven a CART route at one time or another during the year ending December 31, 2003.¹⁵ Blake identified eleven of the 60 drivers on the list who are dedicated First Transit drivers, and one driver who is dedicated to both. CART drivers who fill in as school bus drivers receive their regular rate of pay when they drive for First Transit, as do First Transit drivers when they fill in as CART drivers.

¹⁴ There is no evidence with respect to the rate of pay received by drivers when they drive charters.

¹⁵ The number of employees who have driven a CART route over the course of the year exceeds the total number of drivers employed by CART and First Transit because the list contains the names of former as well as new employees and because of the substantial turnover that occurs among CART and First Transit drivers.

CART payroll is administered through ADP and is sent by Federal Express to CART every two weeks. First Transit payroll is prepared in Cincinnati, Ohio, by First Transit's corporate payroll department and sent by Airborne Express to First Transit. First Transit's payroll records for a two-week period ending June 19, 2004 show that eight of the 27 employees on the payroll were CART drivers performing work for First Transit.

CART drivers wear uniforms. First Transit employees do not wear uniforms except when working a shift on a public transit bus. Both CART drivers and First Transit employees are provided with the same handbook and are subject to a single drug and alcohol policy.¹⁶ The handbook covers such topics as employee conduct, fare collection, driving habits, cell phone usage and customer relations. Complaints against both CART drivers and First Transit employees are handled in the same manner by either the dispatcher or by Blake. Blake handles discipline for both CART drivers and First Transit employees. Disciplinary letters issued to CART drivers normally go out on letterhead that says, "CART, Division of First Transit, Inc." while disciplinary letters to First Transit employees are on First Transit letterhead.

Pay raises for CART drivers are negotiated with the county planning office, while pay raises for First Transit employees are decided internally. CART drivers receive pay increases in January of each year, while First Transit employees receive raises in April. Blake testified that CART drivers normally get a 3 percent pay increase and that school bus drivers sometimes get less than that. According to Blake, all drivers received a 3 percent pay increase this year. The CART budget operates on a calendar year, while First Transit operates on a fiscal year running from April to March.

¹⁶ The record is silent as to whether the handbook is put out by First Transit or by CART, although the Employer maintains in its brief that it is a First Transit rulebook and a First Transit drug and alcohol policy.

CART drivers bid on their routes every six months and bids are awarded by seniority.¹⁷ School bus drivers cannot bid on CART routes. Unlike CART drivers, school bus drivers have assigned routes and they do not bid on them. Both CART and First Transit drivers must fuel their own buses. Fuel is charged to separate accounts.¹⁸ All buses have two-way radios. Public transit buses are on a different frequency than First Transit buses. Employees can transfer back and forth from CART to First Transit without reapplying, but CART drivers lose their seniority if they transfer to school bus work.

ANALYSIS

Single Employer/Joint Employer

The Union has petitioned for a unit of employees employed solely by CART. CART has asserted that First Transit and CART constitute a single employer or, in the alternative, joint employers for the purpose of determining the appropriate bargaining unit. Based on the evidence contained in the record herein, I find that CART and First Transit constitute a single employer.

In determining whether two (or more) nominally separate employing entities constitute a single employer, the Board considers four factors set forth by the Supreme Court in Radio & Television Union 1264 v. Broadcast Service of Mobile, Inc., 380 U.S. 255, 256 (1965): common ownership or financial control, common management, interrelation of operations, and common control of labor relations. See, e.g., Wisconsin Education Association Council, 292 NLRB 702 (1989); Al Bryant, Inc., 260 NLRB 128 (1982). No single factor is controlling and not all need be present. Dow Chemical Co., 326 NLRB 288 (1998). However, three of the four, the interrelation of operations, common management, and centralized control of labor relations, are more critical than common ownership or financial control. Single employer status is marked by

¹⁷ Seniority is solely for purposes of determining bids on routes.

¹⁸ CART drivers charge fuel to a tax-exempt account. First Transit fuel is subject to taxation.

the absence of an arms-length relationship between two or more unintegrated entities. Hahn Motors, 283 NLRB 901 (1987); Al Bryant, Inc., *supra*.

In Celtic General Contractors, Inc., 341 NLRB No. 116 (May 7, 2004), the Board affirmed the decision of the administrative law judge finding that two entities, Celtic and Abacus, constituted a single employer. The judge found that the two entities shared common supervision, that Celtic provided Abacus with funds, that Abacus ordered supplies on Celtic's accounts, that Abacus employees worked on Celtic jobs and vice versa, that some of the Celtic employees were transferred to Abacus' payroll, and that Abacus took over some of Celtic's jobs as a subcontractor to Celtic. Based on the interrelation of labor relations between Celtic and Abacus, the lack of any arm's length relationship between the two entities, and the fact that Celtic management controlled the labor relations and operations of Abacus, the administrative law judge found, and the Board agreed, that the two operations were "at the least interrelated and most likely entirely integrated."

The facts in the instant case warrant the same conclusion. CART and First Transit are both owned by First Group America. They operate out of the same office. While the entities have different telephone numbers and separate listings in the telephone book, they both use the same fax machine. Blake is the general manager for both CART and First Transit. All hiring, firing and discipline is done by Blake. There is a single employee handbook for both sets of employees. The same full-time and part-time dispatchers dispatch both CART and First Transit employees. CART has a separate bank account opened with funds provided by First Transit. CART and First Transit employees share a break room and use the same vending machines. Money from the vending machines is used to fund luncheons and parties attended by both groups of employees. CART and First Transit employees receive from First Transit the individualized

training specific to the vehicles that they drive, but both groups of employees attend joint monthly training sessions conducted by the Employer. All employees are hired at \$8.00 an hour. CART drivers routinely drive school buses as needed and First Transit employees similarly fill in for CART drivers. CART drivers do not need to reapply to work as First Transit drivers, nor do First Transit drivers reapply to work as CART drivers. Both CART and First Transit drivers can volunteer to drive charters as needed. The same mechanics perform work for both First Transit and CART.

In applying the Board's criteria for determining single employer status, I find that the operations of CART and First Transit are interrelated based on the high degree of interchange between CART drivers and First Transit employees. First Transit drivers frequently fill in on CART routes and CART drivers fill in on First Transit routes. Two CART drivers regularly drive school bus routes. Both First Transit and CART drivers are able to volunteer for, and both are assigned to, charter buses, and both sets of drivers can transfer to the other entity without filling out a new application. Both entities are commonly managed by Blake and commonly dispatched by First Transit dispatchers, and there is centralized control of labor relations. Finally, I note that both CART and First Transit are commonly owned by First America Group. There is no evidence in the record to support a finding of an arm's length relationship between the two entities; rather, the record contains ample evidence demonstrating that CART and First Transit operate as a single, integrated enterprise. See National Telecommunications, Inc., 215 NLRB 184 (1974)(wholly owned subsidiary is single employer with parent company where the two entities are engaged in the same business with the same administrative organization).

Based on the factors noted above, I find that the operations of CART and First Transit are highly integrated and, accordingly, that they constitute a single employer for the purpose of collective bargaining.¹⁹

Appropriateness of the Petitioned-For Unit:

At issue is whether the CART drivers share such a community of interest with the First Transit employees as to render inappropriate the petitioned-for unit consisting of solely CART drivers. Based on the evidence adduced during the hearing, I find that the CART drivers share a sufficient community of interest with First Transit drivers and bus monitors as to mandate their inclusion in the unit herein.

Section 9(b) of the National Labor Relations Act mandates the Board to decide on a case-by-case basis whether the appropriate unit for the purposes of collective bargaining consists of an employer unit, a craft unit, a plant unit or a subdivision thereof. 29 U.S.C. Section 159(a). Based on the language of the statute, employees of an employer may be appropriately grouped for purposes of collective bargaining in more than one way.

In deciding whether a unit is appropriate, the Board looks first at the unit petitioned for by the union. P.J. Dick Contracting, 290 NLRB 150 (1988). Nothing in the statute mandates that the petitioned-for unit be the only appropriate unit or even the most appropriate unit; rather, the Act requires only that the unit be appropriate. Black & Decker Manufacturing Co., 147 NLRB 825 (1964); Morand Brothers Beverage Co., 91 NLRB 409 (1950). “A union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer unless ‘an appropriate unit compatible with that requested unit does

¹⁹ Given my finding that CART and First Transit constitute a single employer, it is unnecessary for me to engage in an analysis of whether they are joint employers.

not exist.’” Overnite Transportation Co., 322 NLRB 723 (1996), quoting P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963).

The Board has broad discretion in deciding whether a petitioned-for unit is appropriate under Section 9(b) of the Act. NLRB v. Action Automotive, 469 U.S. 490 (1985). Where the employer seeks to narrow the petitioned-for unit, the analysis is whether all of the employees contained in the petition share a community of interest. Overnite Transportation Co., *supra*. However, where, as here, the employer seeks to broaden the unit, the Board must determine whether the employees that the employer seeks to include share such a strong community of interest with the employees in the petitioned-for unit as to render the unit as requested inappropriate. The fact that the employees that the employer seeks to include in the unit may share a community of interest with those in the petitioned-for unit does not necessarily mean that they should be included in the unit. “Rather, the test is whether the community of interest they share with the solely represented employed employees is so strong that it mandates their inclusion in the unit.” Engineered Storage Products Co., 334 NLRB 1063 (2001).

In making a unit determination, the Board weighs several factors, including the difference in methods of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications; training and skills; differences in job functions and amount of working time spent away from the employment or plant situs; the lack of contact with other employees; lack of integration with work functions of other employees or interchange with them; and the history of bargaining. Kalamazoo Paper Box Co., 136 NLRB 134, 137 (1962). The Board’s primary concern is to group together those employees who share substantial interests in wages, hours and other conditions of employment. School Bus Services, Inc., 312 NLRB 1 (1993).

The issue before the Board in Transerv Systems, Inc., 311 NLRB 766 (1993), was whether a petitioned-for unit of bicycle messengers was an appropriate unit, notwithstanding the employer's argument that driver messengers should be included in the unit. In that case, bicycle messengers and driver messengers worked in a single department under a single department head, were dispatched from the same room, reported to work at the same facility at approximately the same time, and shared a common breakroom. Both sets of drivers received the same benefits, were responsible for their own liability insurance, wore similar uniforms and adhered to similar safety requirements. Both sets of drivers acted as process servers in addition to their regular duties, and there was evidence of permanent transfer, though infrequent, between the two sets of drivers. *Id.*

The petitioner in Transerv Systems relied on the different wage scales of the drivers, separate immediate supervision, different skills utilized by the drivers, the bicyclist's increased exposure to road hazards, and the infrequency of transfers in support of its proposed unit. The Board, in finding the broader unit appropriate, noted that all employees perform the same functions, that there was a high degree of functional integration and frequent contact between the drivers, that all drivers shared similar terms and conditions of employment and common overall supervision, that there was some evidence of transfer between the two groups, and that both bicycle and driver messengers acted as process servers. Thus, the Board found that the facts mandated that driver messengers be included in a unit with bicycle messengers.

As in Transerv, the facts in the instant case warrant a finding that the appropriate unit includes school bus drivers and monitors employed by First Transit. Weighing the factors set forth in Kalamazoo, I find that the school bus drivers share a sufficient community of interest with the CART drivers as to render a unit consisting solely of CART drivers inappropriate. I

note that both CART and public transit drivers are hired at \$8.00 per hour and that both sets of drivers receive annual pay raises.²⁰ None of the drivers receive any benefits with the exception of the six paid holidays granted to the CART drivers because they work under the Clinton County contract. All employees are supervised by Blake and dispatched by the same dispatchers. All drivers must have a CDL license and all receive the same safety training from First Transit. Both sets of drivers are responsible for driving buses. CART and First Transit employees attend safety meetings and training sessions, employee luncheons and parties together. They share a breakroom, sign in at the same area, and CART drivers who drive school buses have contact with the bus monitors while doing so.

The Employer argues in its post-hearing brief that to carve out a unit consisting solely of CART drivers would hamper the Employer's ability to move employees between school bus and public transit work as needed.²¹ The record is replete with evidence that interchange between the CART and school bus drivers is necessary for the First Transit to operate efficiently. Both sets of drivers volunteer for and are selected to drive charter buses. Two CART drivers routinely drive school buses, one driver is dedicated to drive both public transit and school buses, and the substitute drivers drive either public transit or school buses as needed. Further, the Employer presented ample evidence of dedicated First Transit drivers who have driven a CART route during the past year.

While there are some distinctions between the two sets of drivers, I find that the differences do not outweigh the strong community of interest between the two sets of employees. I further note that there is no history of collective bargaining in the instant case that would

²⁰ While I note that the amount of the pay increase for the First Transit employees is decided internally and that the pay increases of CART drivers must be approved by Clinton County, there is no evidence in the record that there is a substantial variation between the pay increases of the two sets of employees. It appears from the payroll records that many of the drivers, both CART and First Transit, have similar hourly wage rate.

²¹ The Petitioner did not file a post-hearing brief.

warrant a different conclusion. Cf. School Bus Services, Inc., 312 NLRB 1 (1993), where the Board found a unit consisting of paratransit drivers at two facilities and excluding school bus drivers appropriate, based in part on a history of collective bargaining between the paratransit drivers and the union. Accordingly, I find that the appropriate unit includes the public transit drivers, school bus driver and monitors employed by both CART and First Transit at its Plattsburgh, New York facility.²²

While no party has requested a unit of all drivers, excluding bus monitors, I conclude that the bus monitors share a sufficient community of interest with the drivers to warrant their inclusion in the unit found appropriate herein. The record demonstrates that there is a bus monitor and a school bus driver on every school bus, that both monitors and school bus drivers receive training in working with the children transported by First Transit. Blake testified that if the bus monitor has a problem with a child, the driver will stop the bus and assist the monitor. Bus monitors work the same schedules as school bus drivers. Based on the high degree of contact between the school bus drivers and the bus monitors, and the functional integration between the two groups, as well as the commonality of supervision and the other factors cited above, I find that bus monitors are appropriately included in the unit herein. See Phoenix Resort Corporation, 308 NLRB 826 (1992)(where the Board found that maintenance employees shared such a strong community of interest with landscapers as to mandate their inclusion in the unit based on the strong evidence of functional integration between the two groups of employees therein.)

²² The Union has not argued, nor do I find, that the parties would be unable to engage in meaningful bargaining because CART drivers and First Transit employees operate under different contracts. The Board stated in Interstate Warehousing of Ohio, 333 NLRB 682 (2001), that issues of bargaining are distinct from those of the appropriateness of the unit. The Board noted that employers are frequently confronted with demands concerning matters that they cannot control because they have entered into contractual relationships with private or public parties. See Management Training Corp., 317 NLRB 1355, 1358–1359 (1995).

CONCLUSION

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time school bus drivers, public transit drivers, and bus monitors employed by the Employer at its facility located at 17 Big Hank Plaza, Plattsburgh, New York, excluding cleaners, mechanics, confidential employees, guards, professional employees, dispatchers and supervisors as defined by the Act, and all other employees.

There are approximately 43 employees in the bargaining unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be

represented for collective bargaining purposes by **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO, LOCAL 294.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by CART with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received in the Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York 14202 on or before **August 2, 2004**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **August 9, 2004**.

DATED at Buffalo, New York this 26th day of July, 2004.

/s/Helen E. Marsh
HELEN E. MARSH, Regional Director
National Labor Relations Board – Region Three
Thaddeus J. Dulski Federal Building
111 West Huron Street - Room 901
Buffalo, New York 14202

440 1760 0501 5000

440 1760 9980

177 1633 5075 0000

240 3367 8312 4200